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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/658,670

09/09/2003

Nancy Tulgren

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06/05/2007

GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

06/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/658,670

**Applicant(s)**

TULGREN ET AL.

**Examiner**

Andrea M. Valenti

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 4-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant had originally claimed and indicated in the specification an "aperture", but applicant has since amended the claims to include the language of a "non-terminal aperture". The meaning of a non-terminal apertures is clear from the figures nor is the concept presented in the specification. Thus the terminology of a "non-terminal apertures" is identified as new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 4-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the terminology, "non-terminal aperture" renders the claims indefinite since it is not clear what exactly applicant structurally means by this phrase. The

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figures and specification do not provide a definition nor explanation of a "non-terminal aperture". The examiner takes it to mean the that aperture is not located at a joint?

Claim 10 recites the limitation "said joint members" in lines 6-7. There is insufficient antecedent basis for this limitation in the claim.

Claims 4-9, 11, 12, 14 and 15 are rejected as being dependent upon a rejected base claim.

### ***Specification***

The amendment filed 04 November 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "non-terminal aperture".

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

Claims 1, 4, 10, 11, 13 are objected to because of the following informalities:

Claim 1, line 18, "one of the support legs" should be --one of the at least one support leg--

Claim 4, line 2, "attachment means" should be --attachment mechanism--

Claim 10, line 16 "one of the support legs" should be --one of the at least one support leg--

Claims 11 and 12, line 2, "support region" should be --support frame--

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Claim 13, line 9, "each pet bed" should be --the pet bed--

Claim 13, line 12-13, "one of the support legs" should be --one of the at least one support leg--

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-9, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent Pub. No. US 2002/0100431 to Sherman et al.

Regarding Claim 1, Harding teaches a modular pet furniture comprising a frame structure comprising a plurality of vertical support members (Harding Fig.1 #70, 72, 74, 76), each vertical support member having an insertion end, a plurality of horizontal support members (Harding Fig. 1 #12, 14, 16, 18) each of the horizontal support members having an insertion end and a plurality of joint members (Harding Fig. 1 #46, 48, 50, 52) for interconnecting the vertical support members and the horizontal support members to form an array of support regions, the joint members accommodating the insertion ends of the vertical support members and horizontal support members therewithin; a pet support structure comprising a pet support surface (Harding Fig. 1 #28) and an attachment mechanism (Harding Fig. 3 #30, 32, 34, 36 and Figs. 5, 6, 8

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#38, 44, 40, 42) operably attached thereto, wherein the attachment mechanism is removably attached to at least one of the vertical support members or the horizontal support members for maintaining the pet support surface in a position with respect to the frame structure.

Harding is silent on an a pet support structure comprising a pet support surface and an attachment mechanism comprising a support frame and at least one support leg extending from the support frame, wherein the support frame has an outer perimeter, wherein the pet support surface is operably attached to the support frame, wherein the non-terminal apertures receives one of the support legs and at least one of the horizontal or vertical support members having a non-terminal aperture located between the joint members. However, Sherman teaches a non-terminal aperture in a horizontal member of modular pet furniture (Sherman Fig.1 and 3 the aperture that receives element #131). Sherman teaches a pet support structure comprising a pet support surface (Sherman Fig. 1 #117) and an attachment mechanism comprising a support frame (Sherman Fig. 1 #113) and at least one support leg (Sherman Fig. 1 #131) extending from the support frame, wherein the support frame has an outer perimeter, wherein the pet support surface is operably attached to the support frame, wherein the non-terminal apertures receives one of the support legs (Sherman #131 is received in a non-terminal apertures of the horizontal member).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Harding with the teachings of Sherman at the time of the invention to give

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the bed structure a den-like feel as taught by Sherman (Sherman paragraph [0015]) and to protect the animal from rain or sun exposure.

Regarding Claim 4, Harding as modified teaches the pet support surface is removably attached to the attachment means (Sherman Fig. 1 #117 is removably attached to #113).

Regarding Claim 6, Harding as modified teaches the pet support surface is fabricated from fabric or plastic (Sherman paragraph [0060] line 4).

Regarding Claim 7, Harding as modified teaches the vertical support members and horizontal support members are secured to the joint members with by set-screw fittings (Harding Fig. 9 #100).

Regarding Claim 8, Harding as modified teaches the vertical support members, horizontal support members, the joint members are fabricated from plastic (Harding Col. 3 line 40).

Regarding Claim 9, Harding as modified teaches the attachment mechanism allows the pet support structure to be selectively positioned with respect to the frame structure (Sherman Fig. 1).

Regarding Claim 13, Harding as modified teaches attaching a bed structure to at least one horizontal support member (Harding #28) and fastening a pet support to the bed structure (Harding #38; Sherman attaching #117 via #131 to a horizontal member).

Regarding Claim 5, Harding as modified teaches a pet enclosure/platform mounted with respect to the pet support surface to at least partially enclose the pet support surface (Sherman Fig. 3 #137, encloses bottom surface of support surface).

Regarding Claim 15, Harding as modified teaches attaching a platform (Sherman Fig. 1 #117) to the top of the modular pet frame (Harding Fig. 1).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent Pub. No. US 2002/0100431 to Sherman et al as applied to claim 1 above, and further in view of U.S. Patent No. 5,577,465 to Cook.

Regarding Claims 10 and 11, Harding as modified is silent on a plurality of pet support surfaces removably attached to an array of support regions. However, Cook teaches that the support members and joints can be connected in an array of many different configurations and plurality of regions (Cook Fig. 1 and abstract last sentence). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Harding with the teachings of Cook at the time of the invention since the modification is merely the duplication of known members to create a multiple effect as taught by Cook to accommodate multiple animals at one time.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent Pub. No. US 2002/0100431 to Sherman et al as applied to claim 1 and 13 above, and further in view of U.S. Patent No. 5,709,164 to Batterton.

Regarding Claim 14, Harding as modified is silent on attaching fabric to at least one of the horizontal cross members to form a scratch pad. However, Batterton



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teaches a modular pet furniture with an attachment fabric to function as a scratch pad (Batterton Col.1 line 45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Harding with the teachings of Batterton at the time of the invention to encourage the cat to scratch the play surface in order to discourage scratching of human furniture as taught by Batterton (Batterton abstract).

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent Pub. No. US 2002/0100431 to Sherman et al and U.S. Patent No. 5,577,465 to Cook as applied to claims 1 and 10 above, and further in view of U.S. Patent No. 5,709,164 to Batterton.

Regarding Claim 12, Harding as modified is silent on attaching fabric to form a scratch pad. However, Batterton teaches a modular pet furniture with an attachment fabric to function as a scratch pad (Batterton Col.1 line 45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Harding with the teachings of Batterton at the time of the invention to encourage the cat to scratch the play surface in order to discourage scratching of human furniture as taught by Batterton (Batterton abstract).

### ***Response to Arguments***

Applicant's arguments filed 13 April 2007 have been fully considered but they are not persuasive.

Examiner maintains that Harding teaches pet furniture i.e. a pet bed. Harding teaches that the pet bed can be for dogs or animals or "other pets" (Harding abstract

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first line and Col. 1 line 5). The device of Harding is not designed just for dogs, nor does applicant claim that applicant's invention is specifically for cats. A cat can be considered a small animal as taught by Harding. Harding teaches the structure of the bed in terms of the horizontal, vertical, and joint members. Harding is merely silent on the structure of the pet support structure and the aperture that receives the leg of the support structure. However, Sherman teaches an animal/pet bed that has a pet support structure (Sherman #117), attached to a frame (Sherman #113) with a leg (Sherman #131) received in an aperture between the joints of the horizontal member. Thus in combination Harding and Sherman teach each and every structural limitation as claimed and identified in the above rejection. There is sufficient motivation and expectation of success to combine the teachings of Harding and Sherman since Sherman explicitly teaches the motivation of creating a den like feel for the animal (Sherman paragraph [0015]). This modification does not render the prior art unsatisfactory for its intended purpose. The intended purpose of both references is to provide a comfortable bedding structure for a pet. Merely adding the structure of Sherman to the structure of Harding does not destroy the teachings of Harding and is with the skill of one of ordinary skill in the art. Examiner maintains that the support of Sherman can be used by a small animal to climb on it or sleep on it or play on it. Applicant has not provided structural features in the claim limitations that distinguish applicant's support structure over that of the cited prior art of record.

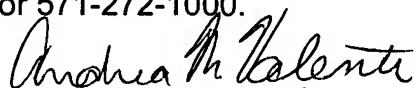
### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrea M. Valenti  
Primary Examiner  
Art Unit 3643

30 May 2007